

TOWN OF UNDERHILL

Development Review Board

SCOTT & AMELIA TOWER
CONDITIONAL USE: WAIVER REQUEST HEARING
Docket #: DRB-19-11

Applicant(s):	Scott & Amelia Tower
Consultant:	Robert Linde
Property Location:	73 River Road (RV073)
Acreage:	± 2.50 Acres
Zoning District(s):	Rural Residential and Water Conservation
Project Information:	The Applicants have constructed an addition to a deck, which encroaches into the west, side property setback.

2018 UNDERHILL UNIFIED LAND USE & DEVELOPMENT REGULATIONS RELEVANT REGULATIONS:

- Article II, Table 2.4 – Rural Residential (pg. 15)
- Article II, Table 2.5 – Water Conservation (pg. 18)
- Article III, Section 3.2 – Access (pg. 30)
- Article III, Section 3.7 – Lot, Yard & Setback Requirements (pg. 38)
- Article III, Section 3.8 – Nonconforming Lots (pg. 39)
- Article III, Section 3.9 – Nonconforming Structures (pg. 40)
- Article III, Section 3.11 – Outdoor Lighting (pg. 41)
- Article III, Section 3.13 – Parking, Loading & Service Areas (pg. 44)
- Article III, Section 3.14 – Performance Standards (pg. 46)
- Article III, Section 3.17 – Source Protection Areas (pg. 55)
- Article III, Section 3.18 – Steep Slopes (pg. 56)
- Article III, Section 3.19 – Surface Waters & Wetlands (pg. 63)
- Article III, Section 3.23 – Water Supply & Wastewater Systems (pg. 68)
- Article V, Section 5.1 – Applicability (pg. 112)
- Article V, Section 5.3 – Site Plan Review (pg. 115)
- Article V, Section 5.4 – Conditional Use Review (pg. 120)
- Article V, Section 5.5 – Waivers & Variances (pg. 123)
- Article VI – Flood Hazard Area Review (pg. 127)
- Appendix A – *Underhill Road, Driveway, Trail Ordinance*

CONTENTS:

- a. Exhibit A - Tower Conditional Use Review Staff Report
- b. Exhibit B - Tower (RV073) Conditional Use Review Hearing Procedures
- c. Exhibit C - Development Review Application
- d. Exhibit D - Responses to Development Review Application Questions
- e. Exhibit E - Zoning Permit Application (B-19-31)

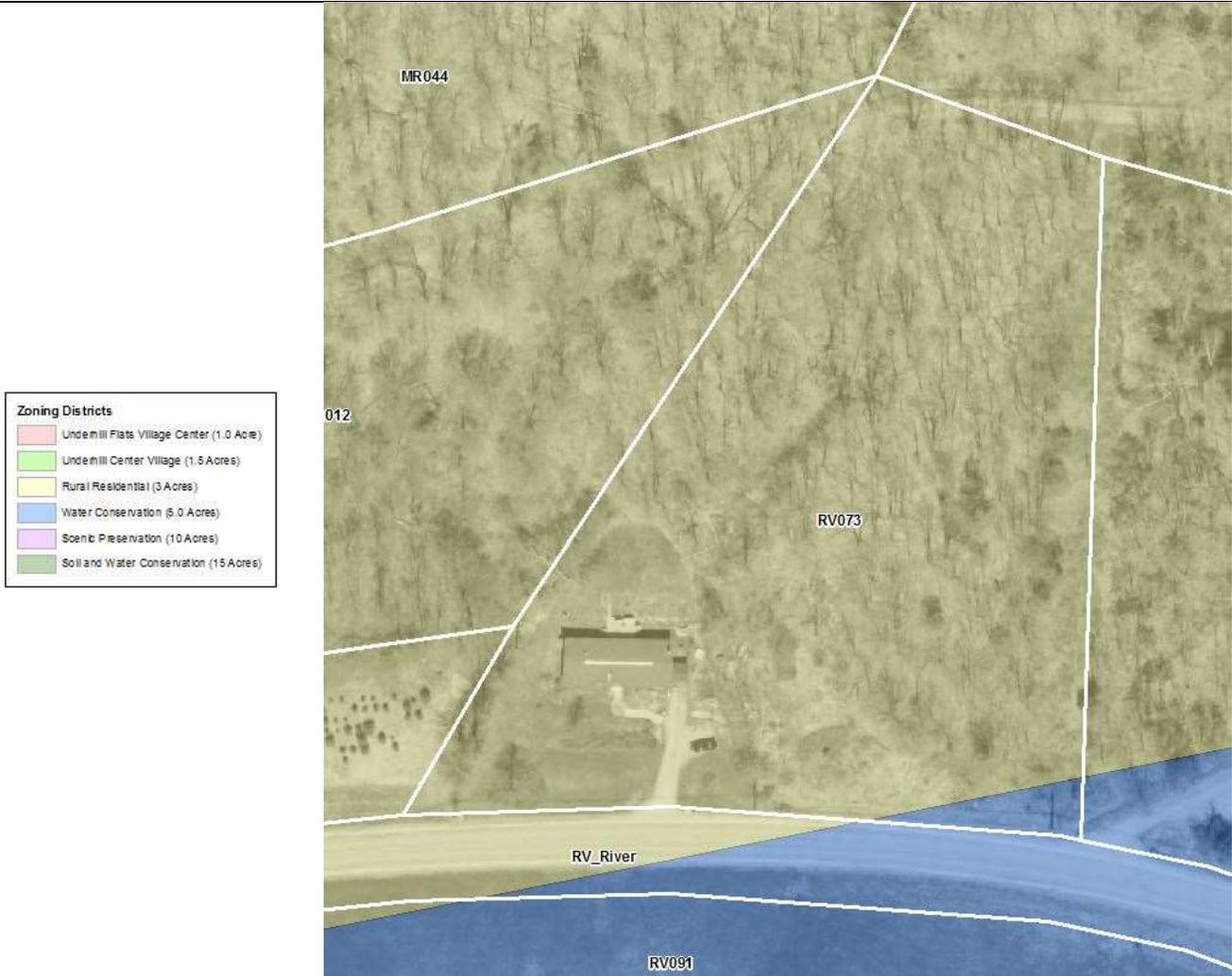
- f. Exhibit F - BFP Notice
- g. Exhibit G - Certificate of Service
- h. [Exhibit H - Omitted]
- i. Exhibit I - Zoning Board of Adjustment Decision
- j. Exhibit J - Site Plan
- k. Exhibit K - Site Plan with Waiver & Variance Limitations

COMMENTS/QUESTIONS

1. **SECTION 3.7 – LOT, YARD & SETBACK REQUIREMENTS:** A dimensional waiver may be approved by the Board “to allow for limited additions to or enlargements of nonconforming structures or structures on nonconforming lots” (§ 3.7.E.1).
2. **SECTION 3.8 – NONCONFORMING LOTS:** The Board may reduce the district setback requirements in accordance with Article V “as necessary to allow for the development of a pre-existing nonconforming lot, if the Board determines that the lot cannot otherwise be developed in conformance with the regulations.”
3. **SECTION 3.11 – OUTDOOR LIGHTING:** The Board typically requires that if new lighting is installed, it shall be downcast and shielded.
4. **SECTION 5.3.B.6 – LANDSCAPING & SCREENING:** The Board should take note of the landscaping & screening techniques of other properties in the areas to determine if any measures under this section should be taken.
5. **SECTION 5.3.B.8 – STORMWATER MANAGEMENT AND EROSION CONTROL:** The Board typically requires as a condition of approval that the Applicants adhere to the guidelines set out in the Vermont DEC Low Risk Site Handbook for Erosion Prevention and Sediment Control.
6. **SECTION 5.4.B.4 – BYLAWS IN EFFECT:** Staff finds that the construction of the deck addition has commenced without the proper permitting in place.
7. **SECTION 5.5.B.2 – APPLICABILITY OF WAIVER REQUEST:** A waiver may be approved in four situations. The proposed project seemingly qualifies under two of the four situations below:
 - a. To allow for the reasonable development and use of a pre-existing nonconforming lot.
 - b. To allow for additions or improvements to a pre-existing nonconforming structure.
8. **SECTION 5.5.B.4 – WAIVER REQUEST ELEMENTS:** The Board shall find that the proposed project satisfies four elements prior to issuing a waiver. When reviewing the four elements, the Board should take note of the following elements as it relates to the project:
 - a. *Element 1* – No reasonable alternative exists for siting the structure, addition or improvement outside of the required setback area.
 - b. *Element 3* – The waiver represents the minimum setback reduction necessary to allow for the proposed development.

STAFF FINDINGS OF RELEVANT SECTIONS

ARTICLE II – ZONING DISTRICTS



	Rural Residential	Water Conservation	Proposed Deck and Utility Room
Lot Size:	3.0 Acres	5.0 Acres	2.5 Acres
Frontage:	250 ft.	300 ft.	±389 ft.
Setbacks:	Principal	Principal	Source: ArcMap & Site Plan (Exhibits J & K)
	Accessory	Accessory	
• Front South	30 ft.	30 ft.	±97 ft.
• Side 1 West	50 ft.	20 ft.	~30 ft.
• Side 2 East	50 ft.	20 ft.	±275 ft.
• Rear North	50 ft.	20 ft.	±349 ft.
Max. Building Coverage:	25%	20%	Assumed Met
Max. Lot Coverage:	50%	30%	Assumed Met
Maximum Height:	35 ft.	35 ft.	Assumed Met

TABLE 2.4 – RURAL RESIDENTIAL DISTRICT**PG. 15**

Purpose Statement: The purpose of the Rural Residential District is to accommodate medium density development on land that has access to public roads where traditional development has taken place, where soil cover is thicker than on the hillside. The Rural Residential district allows for the continuation of existing commercial, residential, and public uses and to encourage future development, particularly along Route 15, Poker Hill Road and Irish Settlement Road that is compatible with these historic uses.

- The proposed deck addition will be attached to the single-family dwelling, and will continue to conform to the medium development along River Road, a public road.
- The existing lot does not conform to the minimize lot size requirement, and is therefore, a preexisting nonconforming lot (see Section 3.8, Nonconforming Lots below).
- The existing dwelling is within the property’s setback requirement, but was previously approved by the Zoning Board of Adjustment as part of a variance request review on October 22, 2002 (see Section 3.9, Nonconforming Structures below; see Exhibit I).
- The proposed project (deck addition) does not satisfy the west, side setback requirement (see Table above), thus requiring a dimensional setback waiver.

TABLE 2.5 – WATER CONSERVATION**PG. 18**

Purpose Statement: The purpose of the Water Conservation District is to protect the important gravel aquifer recharge area in Underhill Center.

- The southeast corner of the property is located in the Water Conservation District.
- The proposed project (deck addition) is not located in the Water Conservation District.
- The proposed project (deck addition) would unlikely impact the aquifer recharge area in a negative manner, even if the project was in the Water Conservation District.

ARTICLE III – GENERAL REGULATIONS

SECTION 3.2 – ACCESS**PG. 30**

- The subject lot accesses to River Road, a Class II Town Highway.
- While the lot is nonconforming, no modifications to the existing access way are being proposed, nor does the proposed project require modifications to the existing access way.
 - *Note:* The nearest part of the driveway is ±96 ft. from the west, side property line and ±365 ft. from the rear, north property line; therefore, is conforming with the 12 ft. setback requirement.
 - *Note:* The Board has authority to require the Applicants to relocated the existing access way if necessary per Section 3.2.D.4. Any relocation of the access way requires an access permit.
 - Relocation is not recommended and seems unnecessary.
- In regards to § 3.2.C.3, requiring an access permit for this project proposal is unnecessary.
- Since no modifications are being made to the existing driveway, review of § 3.2.D is unnecessary.

SECTION 3.7 – LOT, YARD & SETBACK REQUIREMENTS**PG. 38**

- The proposed deck addition will be attached to the north side of the single-family dwelling, the only principal structure/use on the lot.
- The proposed deck addition will not satisfy the west, side property setback requirement, and therefore, a dimensional waiver is required.
 - A dimensional waiver may be approved by the Board “to allow for limited additions to or enlargements of nonconforming structures or structures on nonconforming lots” (§ 3.7.E.1)

SECTION 3.8 – NONCONFORMING LOTS

PG. 39

- The Board may reduce the district setback requirements in accordance with Article V “as necessary to allow for the development of a pre-existing nonconforming lot, if the Board determines that the lot cannot otherwise be developed in conformance with the regulations.”
 - Due to site constraints, specifically the undersized lot and steep & very steep slopes, the ability to construct a conforming structure is limited.

SECTION 3.9 – NONCONFORMING STRUCTURES

PG. 40

- The approved single-family dwelling (see Zoning Board of Adjustment decision, Exhibit I) will remain an approved “nonconforming structure” in the same location.
- Typically, nonconforming structures cannot be expanded; however, the Board may grant a dimensional waiver to expand a nonconforming structure in accordance with Article V.

SECTION 3.11 – OUTDOOR LIGHTING

PG. 41

- No new lighting is proposed (see Exhibit D).
- The Board typically requires that if new lighting is installed, it shall be downcast and shielded.

SECTION 3.13 – PARKING, LOADING & SERVICE AREAS

PG. 44

- The proposed deck addition does not increase the number of parking spaces that are required for the existing uses on the property – a single-family dwelling (two parking spaces).

SECTION 3.14 – PERFORMANCE STANDARDS

PG. 46

- The proposed deck addition is not anticipated to create any of the situations/circumstances enumerated within this Section (specifically § 3.14.B).

SECTION 3.17 – SOURCE PROTECTION AREAS

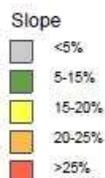
PG. 55

- The subject lot is located entirely within the Groundwater Source Protection Area.
- The project is exempt from review under Section 3.17.B since it relates to a single-family dwelling.



SECTION 3.18 – STEEP SLOPES

- The ANR Atlas depicts areas of steep slopes (15%-25%) or very steep slopes (>25%) in the project area (see directly to the right).
 - While the proposed project (deck addition) does not appear to be located within any areas of steep slopes or very steep slopes, building the deck addition inside the existing “building envelope” is unlikely due to the “building envelope” being tightly confined resulting from the setback requirements and the abundance of steep and very steep slopes.



SECTION 3.19 – SURFACE WATERS & WETLANDS

- The ANR Atlas does not depict any surface waters or wetlands on the property.

SECTION 3.23 – WATER SUPPLY & WASTEWATER SYSTEMS

- A water/wastewater permit is not required for the proposed project.
- The water/wastewater systems appear to have been installed prior to 2007, when the State of Vermont began reviewing water/wastewater systems.

ARTICLE V – DEVELOPMENT REVIEW

SECTION 5.1 – APPLICABILITY

SECTION 5.1.A – TYPE OF REVIEW REQUIRED

- Conditional use review is required in accordance with Sections 3.7.E.1 and 3.9.

SECTION 5.1.B – COORDINATION OF REVIEW

- Does not apply.

SECTION 5.3 – SITE PLAN REVIEW

SECTION 5.3.A – PURPOSE

- Site plan review is required per § 5.4.C when reviewing a conditional use review application.

SECTION 5.3.B – STANDARDS *(the Board may wish to consider and impose appropriate safeguards, modifications and conditions relating to any of the following standards:)*

SECTION 5.3.B.1 – EXISTING SITE FEATURES

- The proposed deck addition appears to avoid, or conforms with, the constraints and requirements pertaining to the resources identified under Section 5.3.A.1.

- Should the Board discover any of the resources identified under Section 5.3.A.1, they have the ability to require one or more of the mitigation techniques:
 - Increased setback distances or undisturbed buffer areas between proposed development and identified resources.
 - The designation of building envelopes sited to exclude identified resource areas, and to limit the extent of site clearing and disturbance.
 - Permanent protection of identified resource areas as designated open space.
 - The screening of development as viewed from public vantage points.
 - The preparation and implementation of management plans for identified resources.

SECTION 5.3.B.2 – SITE LAYOUT & DESIGN

PG. 115

Rural Residential and Water Conservation Districts. Site design and layout shall reinforce the rural character and traditional working landscape of these districts, characterized by wooded hillsides, open fields, and a visual and functional relationship of structures to the surrounding landscape. Buildings shall be sited to minimize, to the extent physically feasible, encroachments on open fields and prominent ridgelines or hilltops, and be oriented and designed in a manner that is compatible with the residential character and scale of adjoining development within these districts.

- The proposed deck addition, is consistent with the rural character of the area and traditional working landscape of the Rural Residential District and Water Conservation District.
- The proposed deck addition appears to conform with the characteristics described.

SECTION 5.3.B.3 – VEHICLE ACCESS

PG. 116

- The property is currently accessed by one curb-cut via River Road.
 - No modifications to the existing curb-cut or driveway are anticipated.

SECTION 5.3.B.4 – PARKING, LOADING & SERVICE AREAS

PG. 117

- See Section 3.13 above.

SECTION 5.3.B.5 – SITE CIRCULATION

PG. 117

- Site circulation is expected to continue being consistent with site circulation patterns associated with single-family dwellings.

SECTION 5.3.B.6 – LANDSCAPING & SCREENING

PG. 118

- No modifications to landscaping and screening are proposed.
- The proposed deck addition will be located on the rear side of single-family dwelling, and will not be visible from River Road.
- The proposed deck addition is unlikely to be visible from the side or rear of the property due to dense vegetation and topography.
- The construction of the proposed deck addition will be consistent with similarly approved project and will conform with the proposed single-family dwelling.
- The Board should take note of the landscaping & screening techniques of other properties in the areas to determine if any measures under this section should be taken.

SECTION 5.3.B.7 – OUTDOOR LIGHTING

PG. 119

- See Section 3.11 above.

SECTION 5.3.B.8 – STORMWATER MANAGEMENT AND EROSION CONTROL **PG. 119**

- The Board typically requires as a condition of approval that the Applicants adhere to the guidelines set out in the Vermont DEC Low Risk Site Handbook for Erosion Prevention and Sediment Control.

SECTION 5.4 – CONDITIONAL USE REVIEW

SECTION 5.4.A – PURPOSE *(the standards and conditions should relate to the identification, avoidance and/or mitigation of potential impacts:)* **PG. 120**

- Board approval is required for development that is proposed to occur in the property's setbacks per Sections 3.7.E.1 and 3.9.

SECTION 5.4.B – GENERAL STANDARDS

SECTION 5.4.B.1 – THE CAPACITY OF EXISTING OR PLANNING COMMUNITY SERVICES OR FACILITIES **PG. 121**

- The construction of the proposed deck addition is not anticipated to have an adverse impact on the existing or planning community services or facilities.
- Staff did not solicit input from UJFD or MMU.

SECTION 5.4.B.2 – THE CHARACTER OF THE AREA AFFECTED **PG. 121**

- The construction of the proposed deck addition is not anticipated to have an adverse impact on the character of the area, as the single-family dwelling and proposed deck addition conform with other development in the area – single-family dwellings.
 - **Location:** the property is located in the Rural Residential District, specifically in an area where the large majority of the development is single-family dwellings.
 - **Scale:** the scale of the proposed construction is consistent with the development that currently exists on the property and the surrounding properties.
 - **Type:** the proposed deck addition will be attached to the single-family dwelling, a permitted use in the Rural Residential District.
 - **Density:** the proposed deck addition will not increase the density in the area affected.
 - **Intensity:** the proposed deck addition will negligibly change the intensity of the area affected.

SECTION 5.4.B.3 – TRAFFIC ON ROADS & HIGHWAYS IN THE VICINITY **PG. 121**

- The proposed deck addition is unlikely to increase the traffic on the roads and highways in the vicinity, thus not resulting in an adverse impact.

SECTION 5.4.B.4 – BYLAWS IN EFFECT **PG. 122**

- Staff finds that the construction of the deck addition has commenced without the proper permitting in place.
- Staff is unaware of any violations or other noncompliance issues pertaining to the property.
- The proposed deck addition will conform with the *Underhill Unified Land Use & Development Regulations* should the Applicants get approval from the Board.

SECTION 5.4.B.5 – THE UTILIZATION OF RENEWABLE ENERGY RESOURCES **PG. 122**

- The proposed development is not anticipated to interfere with any sustainable use of renewable energy resources.

SECTION 5.4.C – SITE PLAN REVIEW STANDARDS **PG. 123**

- See analysis under Section 5.3 above.

SECTION 5.4.D – SPECIFIC STANDARDS *(The Board may consider the following subsections and impose conditions as necessary to reduce or mitigate any identified adverse impacts of a proposed development:)*

SECTION 5.4.D.1 – CONFORMANCE WITH THE TOWN PLAN **PG. 123**

- The proposed development is consistent with the Town Plan.

SECTION 5.4.D.2 – ZONING DISTRICT & USE STANDARDS **PG. 123**

- The proposed deck addition will comply with the Rural Residential District dimensional and use standards should the Board grant conditional use approval.

SECTION 5.4.D.3 – PERFORMANCE STANDARDS **PG. 123**

- See Section 3.14 above.

SECTION 5.4.D.4 – LEGAL DOCUMENTATION **PG. 123**

- Does not apply.

SECTION 5.5 – WAIVERS & VARIANCES

SECTION 5.5.A – APPLICATIONS & REVIEW STANDARDS **PG. 123**

- The applicants have asked for a dimensional waiver to construct a deck addition.
- Other waivers may be granted by the Board as they see appropriate.
 - The Board may waive application requirements and site plan or conditional use review standards under §§ 5.3 and 5.4 that it determines are not relevant to the application.

SECTION 5.5.B – DIMENSIONAL WAIVERS

SECTION 5.5.B.1 – WAIVER REQUEST RATIONALE **PG. 124**

- The Applicants have requested a waiver to construct a deck addition, which will serve the single-family dwelling.

SECTION 5.5.B.2 – APPLICABILITY OF WAIVER REQUEST **PG. 124**

- The Board may grant a waiver if one of the following is true:
 - To allow for the reasonable development and use of a pre-existing nonconforming lot under Section 3.8.
 - To allow for additions or improvements to a pre-existing nonconforming structure under Section 3.9.
 - Comply with federal or state public health, safety, access and disability standards.
 - Allow for the siting of renewable energy structures.
- Statement 1 and 2 above appear to be applicable.

SECTION 5.5.B.4 – WAIVER REQUEST ELEMENTS **PG. 124**

- a. *Element 1* – No reasonable alternative exists for siting the structure, addition or improvement outside of the required setback area.
 - When reviewing the submitted site plan (see Exhibits J & K), siting the deck addition in an area that conforms to the setback requirements is unlikely due to the lot being undersized, as well as the steep slopes and very steep slopes, thereby inevitably encroaching upon the setback, thus requiring a waiver.

- b. *Element 2* – The reduced setback is not contrary to public health, safety and welfare, stated objectives and policies of the Underhill Town Plan, or the intent of these regulations.
 - Staff is unaware of any stated objectives and policies in the Town Plan where the construction of the proposed deck addition would be contrary.
- c. *Element 3* – The waiver represents the minimum setback reduction necessary to allow for the proposed development.
 - The waiver appears to represent the minimum setback reduction necessary to allow for the proposed development, as the single-family dwelling has already been granted a setback variance that encroaches into the setback more than what the Applicants are currently proposing with the deck addition.
- d. *Element 4* – Any potential adverse impacts resulting from reduced setbacks on adjoining properties, surface waters or wetlands shall be mitigated through site design, landscaping and screening, other accepted mitigation measures.
 - The Board should evaluate if any mitigation measures are required as a result of the construction of the proposed deck addition.

ARTICLE VI – FLOOD HAZARD AREA REVIEW

- No Special Flood Hazard Areas are depicted on the existing lot (source: ANR Website); therefore, review under this Article is not required.

APPENDIX A – ROAD & DRIVEWAY STANDARDS

- Since no modifications to the existing driveway and curb cut are proposed, review under the Road Ordinance is unnecessary – an access permit is therefore not being sought at the direction of Staff.